



*RENEWABLE
ENERGY
PROGRAM*

**CALIFORNIA
ENERGY
COMMISSION**

NEW RENEWABLE FACILITIES PROGRAM

FINAL DRAFT GUIDEBOOK

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The Energy Commission established the Renewable Portfolio Standard (RPS) proceeding on March 5, 2003 in response to the statutory requirements of Senate Bill 1078 (Chapter 516, Statutes of 2002, Sher) and Senate Bill 1038 (Chapter 515, Statutes of 2002, Sher), both enacted on September 12, 2002. These laws took effect January 1, 2003 and are codified in Public Utilities Code (PUC) sections 399.11 through 399.15, and sections 381, 383.5, and 445, respectively.

Senate Bill 67 (Chapter 731, Statutes of 2003, Bowen) and Senate Bill 183 (Chapter 666, Statutes of 2003, Sher) were subsequently enacted and revised certain eligibility requirements for out-of-state renewable facilities. These bills were enacted in October 2003 and took effect on January 1, 2004. Senate Bill 67 and Senate Bill 183 are codified in PUC section 399.16 and Public Resources Code (PRC) sections 25740 through 25751, respectively.

This final draft guidebook was developed as part of an ongoing collaborative process between the Energy Commission and the California Public Utilities Commission as directed by Senate Bill 1078 which requires the two agencies to work together to implement the RPS. The guidebook reflects current requirements but may need to be revised periodically to reflect market and regulatory developments and lessons learned as California gains experience in implementing the RPS. This guidebook will be adopted pursuant to PUC section 383.5 subdivision (h), paragraph (1) and PRC section 25747 subdivision (a), which authorize the Energy Commission to adopt guidelines to govern its funding programs and portions of the RPS under Senate Bill 1038 and Senate Bill 1078. These guidelines are exempt from the formal rulemaking requirements of the Administrative Procedures Act.

The requirements in this final draft guidebook are based on the law as set forth in Senate Bill 1078 and Senate Bill 1038 and revised under Senate Bill 183 and Senate Bill 67, the *Renewables Portfolio Standard Decision on Phase 1 Implementation Issues* (publication number 500-03-023F), the *Renewables Portfolio Standard Decision on Phase 2 Implementation Issues* (publication number 500-03-049F), staff analysis, advice from the Energy Commission's technical support contractor, and public input.

This guidebook will be considered for formal adoption by the Energy Commission on April 21, 2004.

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Introduction

The Renewables Committee (Committee) of the California Energy Commission (Energy Commission) proposes this draft *New Renewable Facilities Program Guidebook* pursuant to Senate Bill 1038 (SB 1038, Chapter 515, Statutes of 2002, Sher) and Senate Bill 1078 (SB 1078, Chapter 516, Statutes of 2002, Sher). This guidebook describes the requirements to qualify for and receive production incentives, referred to as supplemental energy payments (SEPs), from the New Renewable Facilities Program (NRFP) element of the Energy Commission's Renewable Energy Program.

SB 1078 directs the Energy Commission to "allocate and award supplemental energy payments" to "eligible renewable energy resources to cover above-market costs of renewable energy." The California Public Utilities Commission (CPUC), in consultation with the Energy Commission, will determine what constitutes these above-market costs by establishing a market price referent.

The Energy Commission will award SEPs to eligible renewable energy facilities through the NRFP, which is currently allocated approximately \$69.525 million by SB 1038.

SEPs will be available to cover the appropriate above-market costs of renewable resources selected by retail sellers to fulfill their RPS obligations. For the purposes of this guidebook, "retail sellers" refers to California's three largest investor owned utilities (IOUs): Pacific Gas and Electric Company (PG&E), San Diego Gas and Electric Company (SDG&E), and Southern California Edison Company (SCE). These entities are also referred to as "electrical corporations" as defined in the glossary included in the *Overall Program Guidebook for the Renewable Energy Program (Overall Program Guidebook, publication number 500-03-004F)*.

SB 1038 contains the following specific directions for awarding SEPs. The Energy Commission:

- Shall make payments for 10 years or for the length of the contract with the electrical corporation if it is of a lesser duration
- Shall reduce or terminate SEPs for projects that either fail to commence or maintain operations in accordance with contractual obligations or that fail to meet eligibility requirements
- Shall manage the funds in an equitable manner so that retail sellers may meet their RPS obligations
- May establish payment caps
- May require an applicant competing for funding to post a forfeitable bid bond or other financial guaranty of the applicant's good faith intent to move forward with the project expeditiously

- May provide preference to projects that provide tangible, demonstrable benefits to communities with a plurality of minority or low income populations

SB 1038 further states that facilities may NOT receive SEPs if the electricity produced is any of the following:

- Sold under an existing long-term contract with an existing in-state electrical corporation if the contract includes fixed energy or capacity payments
- Used on-site or sold to customers in a manner that excludes competitive transition charge payments, or is otherwise excluded from competitive transition charge payments
- Produced by a facility owned by an electrical corporation or a local publicly-owned electric utility.

Related Publications

The Energy Commission has adopted other guidebooks to address the requirements for receiving funding from other elements of the Renewable Energy Program, as well as guidelines governing the overall administration of the program. The *Overall Program Guidebook* describes how the Renewable Energy Program will be administered and includes information on requirements that apply to all program elements of the Renewable Energy Program.

In addition, the Energy Commission is proposing guidelines governing the eligibility and certification of renewable energy facilities under the RPS. These guidelines are set forth in the *Renewables Portfolio Standard Eligibility Guidebook* (publication number 500-04-002FD) describing the Energy Commission's proposed eligibility guidelines and certification process, and are available on-line at <www.energy.state.ca.gov/portfolio>.

To qualify for SEPs under the NRFP, an applicant must satisfy the requirements contained in this *New Renewable Facilities Program Guidebook*, the *Overall Program Guidebook*, and the *Renewables Portfolio Standard Eligibility Guidebook*.

Guidebook Organization

This guidebook is organized as follows:

1. Introduction
2. Program Overview
3. Eligibility
4. Prevailing Wage Requirements
5. Multiple Awards
6. Award Determination

- 7. Eligible Generation
- 8. Payment Terms
- 9. Forms and Samples

Program Overview

The NRFP is intended to foster the development of new in-state renewable facilities and secure for California the environmental, economic, and reliability benefits these facilities will provide.

The NRFP will provide grant funding in the form of production incentives, referred to as SEPs, to eligible renewable facilities for each kilowatt-hour of eligible electricity they generate. To qualify for funding, applicants must show that their proposed renewable facility meets a number of requirements as specified in Public Utilities Code section 383.5(d), as amended by Public Resources Code section 25743.

First, these facilities must be certified by the Energy Commission as an eligible renewable energy resource for purposes of meeting the state's Renewable Portfolio Standard. Second, the facilities must begin commercial operations or be repowered on or after January 1, 2002, or such later date as determined by the Energy Commission. Finally, the facilities must not be owned by an IOU or local publicly-owned electric utility, and the electricity generated must not be sold under certain long-term contracts with an in-state IOU, used on-site, or sold in a manner avoiding competitive transition charge payments.

Applicants for eligible renewable facilities must compete for NRFP funding by participating in competitive RPS solicitations to be held by PG&E, SCE and SDG&E. Applicants who are selected by the utilities as winning bidders under the solicitations may be awarded power purchase contracts to supply power. Any contracts proposed by the utilities are subject to CPUC approval.

The contracts will be based in part on the energy price bid by the applicants in the solicitations, measured in cents per kilowatt-hour. If the energy price bid by a winning applicant is above a benchmark price, or market price referent, established by the CPUC after the bids are submitted to the utilities, an applicant that is deemed eligible may receive SEPs from the NRFP. SEPs are calculated based on the difference between the bid price and the benchmark price, up to any Energy Commission-established caps. SEPs are to be paid for the lesser of 10 years or the length of the utility contract, with a further restriction that no SEPs will be made for contracts with terms of less than three years.

The Energy Commission may enter into grant agreements with the winning applicants of utility solicitations once applicants enter into utility contracts and complete any required environmental review of their renewable facilities under the National Environmental Policy Act and/or the California Environmental Quality Act.

Once the renewable facilities are constructed and commence commercial operations, the applicants may submit monthly invoices to the Energy Commission to begin receiving SEPs under their NRFP grants.

Eligibility

A checklist for SEP eligibility is shown below, followed by a description of each item.

- ☒ Facility is certified/pre-certified as an eligible renewable energy resource by the Energy Commission.

To compete for SEPs, entities must be either pre-certified or certified by the Energy Commission as an eligible renewable resource qualifying for the RPS and for SEPs. The certification process is described in the *Renewables Portfolio Standard Eligibility Guidebook*, publication number 500-04-002D.

- ☒ Facility/facility owner has met all fuel-specific eligibility and/or reporting requirements described in the *Renewables Portfolio Standard Eligibility Guidebook*.

- ☒ Facility/facility owner has a power purchase contract with an IOU that has been approved by the CPUC and resulted from a CPUC-approved RPS solicitation.

The Energy Commission will pay SEPs to the party with which an IOU holds a contract for the purchase of power generated by a certified new or repowered renewable energy facility under the provisions of the RPS.

If the contracting entity is not the owner of the certified renewable energy facility, the contracting entity must identify and establish its rights to sell the power generated by the certified renewable energy facility. Further, any renewable energy facility that sells its generation to a contracting entity will be obligated to document the facility's eligibility and generation.

To receive SEPs, applicants must be selected as a winning bidder in a CPUC-approved RPS solicitation and enter into a power purchase contract with the IOU conducting that solicitation. In addition, the power purchase contract must be approved by the CPUC. Parties with bilateral contracts signed outside of a CPUC-approved RPS solicitation are not eligible for SEPs.

- ☒ Facility owner does not have an existing Senate Bill 90 (SB 90, Chapter 905, Statutes of 1997, Sher) funding award for the renewable energy facility, or
- ☒ Facility owner has an existing SB 90 funding award for the renewable facility and agrees to relinquish that award to be eligible for SEPs. If so, facility must specify that it has either:

- ✓ Commenced commercial operations and received SB 90 payments, or
- ✓ Not commenced commercial operations and not received SB 90 payments

Projects cannot receive both SEPs and SB 90 award payments. A project with a conditional funding award from the Energy Commission's New Renewable Resources Account under SB 90 can participate in an RPS solicitation to secure a power purchase contract, but must relinquish its SB 90 award if it wishes to receive SEPs.

Bidders with SB 90 awards whose projects have not commenced commercial operations must state their intention to either (1) keep their SB 90 award and agree to be ineligible for SEPs or (2) relinquish the SB 90 award and compete for potential SEPs. Bidders with SB 90 awards whose projects are already on-line must do the same, with the further understanding that any funding awarded through SEPs will be reduced by the amount of SB 90 payments already made to these projects.

A winning bidder in an RPS solicitation that chooses to keep its SB 90 award can receive payments under the terms and conditions of the SB 90 award, but cannot receive SEPs resulting from the RPS solicitation. A winning bidder that chooses to relinquish its SB 90 award and any payments already made under that award must do so once it executes a contract with a utility. This must be done even if the bidder does not ultimately qualify for SEPs because its bid was below the market price referent for that solicitation. If a bidder does not secure a contract under the RPS solicitation, however, the bidder will not be required to relinquish its SB 90 award.

Winning bidders in an RPS solicitation that choose to keep their SB 90 awards must comply with the Energy Commission's RPS requirements, including the RPS tracking and verification requirements, to the same extent as winning bidders who are awarded SEPs. It may be necessary to amend a winning bidder's SB 90 funding award agreement to implement this requirement.

Multiple Awards

Facilities that divide their electricity generation among two or more separate power purchase contracts can be eligible for SEPs provided that all of the generation from each contract is reported to the Energy Commission's RPS tracking and verification system. Facilities, however, are only eligible for SEPs for the first 10 years of generation from their initial RPS contract(s).

Generation that is awarded SEPs may not compete for a second award once the contract with an IOU expires, even if SEPs were awarded for a period of less than 10 years. If a power purchase contract with an IOU is terminated for some reason beyond a generator's control, the generator may appeal this provision to the Energy Commission. The appeal process is outlined in the *Overall Program Guidebook*. The

cumulative number of years of SEP payments cannot exceed 10 years under any circumstances.

Eligible Generation

The Energy Commission will only pay SEPs for eligible generation. A renewable energy facility may not receive SEPs if the electricity produced is any of the following:

- Sold under an existing long-term contract with an existing in-state IOU entered into prior to January 1, 2002 if the contract includes fixed energy or capacity payments
- Used on-site or sold to customers in a manner that excludes competitive transition charge payments, or is otherwise excluded from competitive transition charge payments
- Produced by a facility owned by an IOU or a local publicly-owned electric utility

Award Determination

To allow the Energy Commission to determine the availability of public goods charge (PGC) funding, bidders in IOU solicitations who wish to receive SEPs must include in their bids an estimate of the amount of generation to be produced by the project and sold to the procuring IOU over the term of the proposed funding period (up to a maximum of 10 years). This estimate will then be used to determine each bidder's total potential SEP award. The bidders' estimate of energy generation should only include generation that is eligible for SEPs.

For each solicitation, the Energy Commission will compare the requested SEPs with the available PGC funds to determine if PGC funds are adequate to cover SEPs for all the selected winning bidders. The Energy Commission may impose a cap on SEP awards as discussed below under "Payment Terms." If funding is available to cover only a portion of the SEPs for which a bidder might otherwise be eligible, the bidder may choose to take a partial award or decline the award entirely.

The Energy Commission will notify the CPUC, IOU, and bidders of the availability of PGC funds within 30 days of receiving all data needed to conduct this evaluation. The Energy Commission will also notify the CPUC, IOU and winning bidders of the potential PGC award per winning bidder.

The Energy Commission will approve final PGC awards after winning bidders have met all of their environmental review requirements. At that time, the Energy Commission will sign SEP Award Agreements with the winning bidders. A sample SEP Award Agreement is shown in the Forms and Samples section of this guidebook. This agreement is provided as an example only and will be modified once the CPUC

approves standard terms and conditions for IOU contracts and IOU solicitations are held.

SB 1038 states that “The Energy Commission may provide preference to projects that provide tangible demonstrable benefits to communities with a plurality of minority or low-income populations.” The Committee recommends that such preference be evaluated on a case-by-case basis as projects apply for SEPs, with specific protocols added to the program guidelines as needed as the program progresses.

Payment Terms

SEP Allocation

The issue of how the RPS will apply to Energy Service Providers (ESPs) or Community Choice Aggregators (CCAs) is still unresolved. The Committee recognizes the eventual participation of these parties, but at this time does not propose to set aside any portion of available PGC funds for non-utility entities.

Caps

SB 1038 allows the Energy Commission to establish payment caps on SEPs. This could include a cap on the cents per kilowatt-hour SEP, on the amount of funding per project, or the total amount of PGC funds available for a given solicitation to achieve the most efficient management of PGC funds. At this time, the Committee is not proposing to establish caps in advance, but instead intends to evaluate the bids received in each solicitation and determine the need for caps at that time. Any caps would be established during the Energy Commission’s 30-day evaluation period to determine the potential PGC award per winning bidder.

Because the Energy Commission has the authority to revise guidelines upon approval at a Business Meeting with 10 days notice, any needed caps could be set and implemented in a timely manner without delaying the final results of a solicitation. The Energy Commission will not impose any additional caps once it enters into conditional funding awards with bidders.

Generation Requirements

The bidder’s estimated annual generation by the project over the term of the proposed funding period will be specified in the awardee’s funding award agreement. The estimated generation may vary from year to year. The Energy Commission will evaluate each facility’s actual generation over the first three years of the funding period. If the actual generation during those first three years averages less than 85 percent of the estimated generation for that three-year period, the Energy Commission will contact the facility for an explanation for the undergeneration.

After evaluating the explanation provided by the facility, the Energy Commission may decide to reduce the facility's SEP award to reflect the amount of actual average annual generation. Generators may appeal any proposed award reduction under the *Overall Program Guidebook*. Funds removed from a project award as a result of undergeneration will be returned to the Renewable Resource Trust Fund for subsequent distribution or reallocation.

Generation in excess of a bidder's estimated annual generation specified in the awardee's funding award is not eligible for SEPs.

Invoicing Process

To receive SEPs, projects that have commenced commercial operations must submit monthly invoices identifying the amount of eligible power generated by the project. The SEP payment period will begin after the initial delivery date of the first kilowatt-hour of energy sold under a power purchase contract with an IOU approved by the CPUC resulting from a CPUC-approved RPS solicitation.

The monthly invoice form shall consist of a completed and properly executed CEC-SEP-1 form, a copy of which is included with this guidebook, or its replacement at the time, together with an attached invoice or written statement from the purchasing entity verifying the project's eligible power generation for the billing month. Invoices are due 45 days after the end of the month in which the energy is generated; for generation during the month of January, invoices are due March 10 and checks are expected to be mailed April 1.

If the purchasing entity's statement is not received in time to submit it with a project's invoice, projects may submit an invoice with other evidence of the amount of eligible power generated during the billing month. A letter explaining why the third party's statement could not be submitted and describing the evidence submitted in its place must also be submitted with the invoice. The Energy Commission will evaluate these invoices on a case-by-case basis and notify the submitting party whether the amount claimed in the invoice, or any part of it, will be accepted and paid upon. The Energy Commission may elect to pay only that portion of the amount invoiced that appears to be reasonable given the evidence submitted in support of the invoice, the prior months' generation, and other factors deemed pertinent at the time of evaluation.

Once the third party statement becomes available, it must be furnished to the Energy Commission so that payment adjustments will be made for any differences in the estimated eligible generation and actual eligible generation.

This procedure will only be in effect while the interim generation tracking system is in place. The Energy Commission will use settlement data to verify generation once the Energy Commission's electronic tracking system is operational.

Additionally, biomass facilities receiving SEPs must submit an annual report to the Energy Commission describing fuel use as follows: tons of biomass by type of biomass, the air district from which the biomass originated if the fuel may have been open-field burned had it not been used for electricity production, and an attestation from the fuel supplier(s) that the biomass fuel continues to meet the RPS eligibility standards. The report is due to the Energy Commission on February 15th of each year to report on the biomass supply consumed in the previous calendar year. This information is required pursuant to Senate Bill 183 (Chapter 666, Statutes of 2003, Sher), as codified in Public Resources Code section 25743 (f).

Invoices may be submitted to the Energy Commission at the following address:

California Energy Commission
New Renewable Facilities Program, MS-45
1516 Ninth Street
Sacramento, CA 95814

Invoices may be submitted by telefax to (916) 653-8251, but an original signed copy of the invoice must also be submitted before payment will be mailed to the project.

To receive funding, projects must also complete the State of California Vendor Record (STD-204) form shown in the “forms” section of this guidebook. The State of California requires that all parties entering into business transactions that may lead to payment(s) from the State provide their Taxpayer Identification Number (TIN) as required by the State Revenue and Taxation Code, Section 18646, and Federal Internal Revenue Code, Section 6109. This form must be on file with the Energy Commission before any payments can be made. If you have any questions about this form, please contact the California Franchise Tax Board at 1-800-852-5711.

Basis for SEP Termination

The Energy Commission reserves the right to terminate any SEP Award Agreement for reasonable cause by providing 30 days notice to the awardee. This 30-day period applies from the signing of the SEP Award Agreement to the end of the period of payments to the project. The Energy Commission may not terminate SEP awards if the circumstances are corrected, or if all parties agree upon an alternative course of action. The Commission does not intend to terminate SEP awards without reasonable cause.

Examples of reasonable cause include but are not limited to:

- Awardee failing to maintain certification as an eligible renewable resource, or knowingly providing false or misleading information about the project, as determined by the Energy Commission, in awardee’s application for certification.

Entities holding SEP Award Agreements must be certified by the Energy Commission as eligible renewable resources, and must maintain that certification as

instructed in the *Renewables Portfolio Standard Eligibility Guidebook* (publication number 500-04-002D). Failure to maintain certification or providing false or misleading information about the project in the application for certification are cause for SEP award termination.

- Awardee's utility contract is terminated for any reason.

If the power purchase agreement that serves as the basis of the SEP award is terminated for non-performance or any other reason, the Energy Commission will terminate the SEP award at the same time. However, SEP awardees whose utility contracts have been terminated for reasons beyond the awardee's control may petition the Energy Commission as described in the *Overall Program Guidebook* for permission to compete for a subsequent SEP award.

- The funding needed to fund a SEP award is not available through the Renewable Resource Trust Fund.

Receipt of SEPs is contingent on availability of funds. The Energy Commission may terminate a SEP award if the Renewable Resource Trust Fund does not receive the funds expected, for example if state or federal laws alter the amount of money allocated to the NRFP or the structure of the program prior to the expected end of the funding period.

Appendix A

FORMS AND SAMPLES

The final forms to be used in the New Renewable Facilities Program are in the process of being developed. The forms and samples contained in this final draft guidebook are draft and will be finalized once the guidebook is adopted by the Energy Commission.

Instructions for Completing CEC-SEP-1

CEC--SEP -1

STD-204

Sample Supplemental Energy Payment Award Agreement

Instructions for completing CEC-SEP-1, Monthly Invoice Report for New Renewable Facilities Program

1. **Company Name** – Current full name of the generating facility. Include name of business or company that owns facility, if different than facility name.
2. **Generation Period** – The month and year for which generation is being submitted
3. **Date Submitted** – Date invoice submitted to the Energy Commission
4. **CEC ID** – Certified Renewable Supplier identification number assigned to the facility by the Energy Commission under the certification process described in Renewables Portfolio Standard Eligibility Guidebook (publication number 500-04-002D)
5. **Eligible Production (in kWhs)** – Number of kWhs of generation eligible for funding during the generation period, based on the statement of an independent third party. If eligible generation is sold to more than one entity in a given month, attach a separate statement itemizing the amount of eligible generation sold to each entity. Third party verification is only required while the Energy Commission's interim tracking system is in place; once the final electronic tracking system is in operation, the third-party verification is no longer necessary.
6. **Declaration** – The declaration must be completed by an officer of the company such as the Chief Executive Officer, Chief Financial Officer, or a similar officer with authority to bind the company

Note: For administrative convenience, the format of the CEC-SEP-1 form, as well as the information requested, may be modified in the future. [Such modifications will not be deemed substantive in nature.]

CEC-SEP-1

JANUARY 2004

MONTHLY INVOICE FOR SUPPLEMENTAL ENERGY PAYMENTS NEW RENEWABLE FACILITIES PROGRAM

Note: All data submitted on this form is subject to public disclosure



RENEWABLE
ENERGY
PROGRAM

CALIFORNIA ENERGY COMMISSION

Please submit invoice to:

California Energy Commission
New Renewable Facilities Program, MS-45
1516 Ninth Street, Sacramento, CA 95814-5512
Telefax: (916) 653-8251

*Instructions for completing this form are in the Guidebook for
the New Renewable Facilities Program (pub. no. 500-04-001D).*

Please print or type

Company Name:										
Generation Period:								Date Submitted:		
CEC ID #:										
Eligible Production (in kWhs)								Please check one:		
										<input type="checkbox"/> Estimated Generation (attach explanation letter)
										<input type="checkbox"/> Based upon attached third-party statement

DECLARATION

I, (print name) _____, declare under penalty of perjury that the information provided in this invoice is true and correct to the best of my knowledge and that I, as an authorized agent of the above named company, have authority to submit this invoice on the company's behalf. I further declare under penalty of perjury that I have reviewed the electricity production data included in the attached statement(s) and that, to the best of my knowledge, it does not overstate the amount of electricity production supplied to the transmission grid or distribution system by the above named company.

Dated _____ at _____.
(month/day/year) (place of execution)

Signature: _____ Title: _____

ARE YOU A RESIDENT OR A NONRESIDENT?

Each corporation, individual/sole proprietor, partnership, estate or trust doing business with the State of California must indicate their residency status along with their vendor identification number.

A corporation will be considered a "resident" if it has a permanent place of business in California. The corporation has a permanent place of business in California if it is organized and existing under the laws of this state or, if a foreign corporation has qualified to transact intrastate business. A corporation that has not qualified to transact intrastate business (e.g., a corporation engaged exclusively in interstate commerce) will be considered as having a permanent place of business in this state only if it maintains a permanent office in this state that is permanently staffed by its employees.

For individuals/sole proprietors, the term "resident" includes every individual who is in California for other than a temporary or transitory purpose and any individual domiciled in California who is absent for a temporary or transitory purpose. Generally, an individual who comes to California for a purpose which will extend over a long or indefinite period will be considered a resident. However, an individual who comes to perform a particular contract of short duration will be considered a nonresident.

For withholding purposes, a partnership is considered a resident partnership if it has a permanent place of business in California. An estate is considered a California estate if the decedent was a California resident at the time of death and a trust is considered a California trust if at least one trustee is a California resident.

More information on residency status can be obtained by calling the Franchise Tax Board at the numbers listed below:

From within the United States, call 1-800-852-5711
From outside the United States, call 1-916-854-6500
For hearing impaired with TDD, call 1-800-822-6268

ARE YOU SUBJECT TO NONRESIDENT WITHHOLDING?

Payments made to nonresident vendors, including corporations, individuals, partnerships, estates and trusts, are subject to withholding. Nonresident vendors performing services in California or receiving rent, lease or royalty payments from property (real or personal) located in California will have 7% of their total payments withheld for state income taxes. However, no withholding is required if total payments to the vendor are \$1500 or less for the calendar year.

A nonresident vendor may request that income taxes be withheld at a lower rate or waived by sending a completed form FTB 588 to the address listed below. A waiver will generally be granted when a vendor has a history of filing California returns and making timely estimated payments. If the vendor activity is carried on outside of California or partially outside of California, a waiver or reduced withholding rate may be granted. For more information, contact:

Franchise Tax Board
Withhold at Source Unit
Attention: State Agency Withholding Coordinator
P.O. Box 651
Sacramento, CA 95812-0651
Telephone: (916) 845-4900
FAX: (916) 845-4831

If a reduced rate of withholding or waiver has been authorized by the Franchise Tax Board, attach a copy to this form.

PRIVACY STATEMENT

Section 7(b) of the Privacy Act of 1974 (Public Law 93-5791) requires that any federal, state, or local governmental agency which requests an individual to disclose his social security account number shall inform that individual whether that disclosure is mandatory or voluntary, by which statutory or other authority such number is solicited, and what uses will be made of it.

The State of California requires that all parties entering into business transactions that may lead to payment(s) from the State must provide their Taxpayer Identification Number (TIN) as required by the State Revenue and Taxation Code, Section 18646 to facilitate tax compliance enforcement activities and to facilitate the preparation of Form 1099 and other information returns as required by the Internal Revenue Code, Section 6109. The TIN for individual and sole proprietorships is the Social Security Number (SSN).

It is mandatory to furnish the information requested. Federal law requires that payments for which the requested information is not provided be subject to a 31% withholding and state law imposes noncompliance penalties of up to \$20,000.

You have the right to access records containing your personal information, such as your SSN. To exercise that right, please contact the business services unit or the accounts payable unit of the state agency(ies) with which you transact business.

Please call the Department of Finance, Fiscal Systems and Consulting Unit at (916) 324-0385 if you have any questions regarding this Privacy Statement. Questions related to residency or withholding should be referred to the telephone numbers listed above. All other questions should be referred to the requesting agency listed in Section 1.

DRAFT SAMPLE SUPPLEMENTAL ENERGY PAYMENT (SEP) AWARD AGREEMENT

This agreement is provided as an example only and will be modified.

1. **Purpose.** This SEP Award Agreement ("Agreement") is entered into between _____ ("Awardee") and the California Energy Commission ("Commission") for the purpose of creating a funding award pursuant to the Commission's New Renewable Facilities Program Guidelines ("Guidelines") Awardee was selected as a winning bidder in solicitation _____ and must comply with the terms and conditions of the Guidelines, this Agreement, and contract _____ with _____ to be eligible for funding from the Renewable Resource Trust Fund.
2. **Incorporation by Reference.** The Commission's Guidelines are not attached hereto, but are incorporated by reference and made a part of this Agreement.
3. **SEP award Amount.** The total amount of Awardee's SEP award under this Agreement is _____, and is based on the difference between the Awardee's bid of _____ cents/kWh and the applicable market price referent for solicitation # _____, subject to any Energy Commission imposed caps, and the following estimated annual levels of eligible electrical power generation, as in Awardee's bid.

Year 1 Generation	_____ kWhs
Year 2 Generation	_____ kWhs
Year 3 Generation	_____ kWhs
Year 4 Generation	_____ kWhs
Year 5 Generation	_____ kWhs
Year 6 Generation	_____ kWhs
Year 7 Generation	_____ kWhs
Year 8 Generation	_____ kWhs
Year 9 Generation	_____ kWhs
Year 10 Generation	_____ kWhs
Total	_____ kWhs

4. **Term.** The term of this Agreement shall be from the date of execution by both Awardee and the Commission to _____ years after the project's on-line date unless terminated earlier by the Commission pursuant to the Guidelines.
5. **Non-Transferability of SEP award.** The SEP award created by this Agreement is specific to Awardee and the _____ project. This SEP award is not transferable or assignable to another project, and may not be assigned to another entity without the Commission's prior written permission.

6. **Assignment.** Awardee shall not assign its rights nor delegate its duties under this Agreement without the Commission's advance written approval.
7. **Indemnification.** Awardee agrees to indemnify, defend and save harmless the Commission, its officers, agents and employees from any and all claims and losses accruing and resulting to any and all contractors, subcontractors, materialmen, laborers, and any other person, firm or corporation furnishing or supplying work, services, materials, or supplies in connection with this funding agreement award, and from any and all claims and losses accruing or resulting to any person, firm or corporation who may be injured or damaged by the Awardee in the performance of work under this award.
8. **Review and Disclaimer.** Review by the Commission of the design, operation, or maintenance of Awardee's project or related interconnection or generation facilities shall not constitute any representation as to the economic or technical feasibility, operational capacity or reliability of such facilities. Awardee shall in no way represent to any third party that the Commission's review of Awardee's project is a representation by the Commission as to the project's economic or technical feasibility, operational capability, or reliability. Awardee is solely responsible for its project's economic and technical feasibility, operational capability, and reliability.
9. **Certification.** Awardee has provided evidence of project certification as an eligible renewable resource and must maintain that certification as outlined in the Commission's *Renewables Portfolio Standard Eligibility Guidebook* (publication number 500-04-002D). Failure to do so may result in Awardee's SEP award being canceled as specified in the guidelines.
10. **SEP Award Cancellation.** Awardee acknowledges that its SEP award or SEP award payments may be canceled for cause pursuant to the Guidelines.
11. **Supplemental Energy Payments.** Awardee acknowledges that its eligibility to receive SEPs under this Agreement shall be contingent upon its satisfaction of all terms and conditions set forth in the Guidelines and this Agreement.
12. **Invoicing.** Awardee shall invoice for payments under this Agreement in accordance with the procedures specified in the applicable Guidelines.
13. **Records Retention.** Unless stated otherwise in the applicable Renewable Guidelines, Awardee shall:
 - keep all records relating to and verifying the accuracy of information stated in an invoice for payment submitted pursuant to this Agreement for a period not less than three years after the end of the calendar year in which payment for the invoice is made;
 - keep all records relating to and verifying the accuracy of information stated in a report submitted to the Commission pursuant to the Guidelines for a period not

less than three years after the end of the calendar year in which the report is submitted; and

- keep all records relating to and verifying the overall usage, on a total energy input basis, of all fossil fuels and non-fossil fuels used to generate electricity in a given calendar year for a period not less than four years after the end of that calendar year.

14. Awardee Contact. Awardee's Contact under this Agreement shall be _____. Any notice to Awardee under this Agreement shall be forwarded to the Awardee contact at the following address:

15. Commission Contact. The Commission's contact under this Agreement shall be _____. Any notice to the Commission under this Agreement shall be forwarded to the Commission contact at the following address:

California Energy Commission
1516 Ninth Street, MS-____
Sacramento, California 95814
Attn: _____

16. CEQA Review. *The Commission has reviewed the _____ project and finds that:*

- *the project has complied with CEQA, or*
- *the project is exempt from CEQA under _____, or*
- *the project is subject to a formal environmental study under the California Environmental Quality Act (CEQA) and/or the National Environmental Policy Act (NEPA), and that _____ is the Lead Agency responsible for conducting a formal environmental study and preparing related environmental documents. Commission approval of this SEP Award Agreement is expressly conditioned on this lead agency's CEQA study and approval of the project. Awardee shall provide Commission staff with a copy of the lead agency's environmental documents once prepared and finalized, and proof of the agency's approval of the project as part of completing milestone #3 as identified in the attached Project Award Package. Awardee acknowledges that its failure to secure project approval by the _____ lead agency will result in the cancellation of this SEP Award Agreement and Awardee's SEP award from the New Renewable Facilities Program.*

17. Understanding of Guidelines and Their Application. Awardee warrants that it has read and understands the Commission's Guidelines applicable to the New

Renewable Facilities Program, and acknowledges that these guidelines govern the payment of any funds under this Agreement and authorize the Commission to cancel Awardee's SEP award or SEP award payment for reasonable cause, to conduct random audits of Awardee's invoices, to conduct inspections of Awardee's facilities and books as part of these audits, to initiate enforcement actions to recover any SEP award payments the Awardee was not otherwise entitled to receive, to initiate investigations of Awardee to verify fraud or misrepresentation in connection with Awardee's application for or receipt of its SEP award or a SEP award payment, or to take action as otherwise authorized by the Guidelines to properly administer the Renewable Resource Trust Fund. Awardee further understands that the Commission's Guidelines are subject to change and that any changes made to the Guidelines shall apply to Awardee and its SEP award under this Agreement.

18. **Law Governing.** This Agreement shall be interpreted, governed and construed under the laws of the State of California.

Signature of Project Representative
Title

Signature of CEC Representative
Title

Appendix B

GLOSSARY

This glossary is included only to assist parties in their review of the guidebook. Once the guidebook is adopted, this glossary will be removed and the definitions placed into the Overall Program Guidebook for the Renewable Energy Program.

Biomass — any organic material not derived from fossil fuels, including agricultural crops, agricultural wastes and residues, waste pallets, crates, dunnage, manufacturing, and construction wood wastes, landscape and right-of-way tree trimmings, mill residues that result from milling lumber, rangeland maintenance residues, and wood and wood waste from timbering operations.

Capacity — the maximum amount of electricity that a generating unit, power facility, or utility can produce under specified conditions. Capacity is measured in kilowatts or megawatts.

Community choice aggregator — as defined in AB 117 (Chapter 838, Statutes of 2001-2002, Migden) refers to any of the following entities, if that entity is not within the jurisdiction of a local publicly-owned electric utility that provided electrical service as of January 1, 2003: any city, county, or city and county whose governing board elects to combine the loads of its residents, businesses, and municipal facilities in a community-wide electricity buyers program or any group of cities, counties, or cities and counties whose governing boards have elected to combine the loads of their programs, through the formation of a joint powers agency established under Chapter 5 (commencing with Section 6500) of Division 7 of Title 1 of the Government Code.

Commercial operation — the date on which a renewable energy facility first delivers power for sale to the procuring retailer seller. (This definition shall be consistent with the facility's power purchase contract with the retailer seller.)

Competitive transition charge (CTC) — a charge authorized by the California Public Utilities Commission that is imposed on investor-owned utility (IOU) ratepayers (i.e. customers that receive electricity distribution services from the IOU) to recover the costs of utility investments made on behalf of their former customers. The CTC is to be collected in a competitively-neutral manner that does not increase rates for any customer class solely due to the existence of transition costs. [Public Utilities Code Section 367 (added by AB 1890)]

Digester gas — gas from the anaerobic digestion of organic wastes.

Electric service provider — an entity such as a marketer or aggregator who provides electricity directly to an end-use customer in the direct-access market.

Electrical corporations — Pacific Gas and Electric Company, San Diego Gas and Electric Company, Southern California Edison Company, or other electrical corporations as defined by Public Utilities Code section 218, contributing funds to the Renewable Resource Trust Fund pursuant to Public Utilities Code section 399.

End-use customer (end-user) — a residential, commercial, agricultural, or industrial electric customer who buys electricity to be consumed as a final product (not for resale).

Existing long-term contract — a power purchase contract entered into with an IOU prior to January 1, 2002 that provides long-term fixed energy and/or capacity payments.

Facility — see “project.”

Fossil fuel — fuel comprised of hydrocarbon constituents, including coal, petroleum, or natural gas, occurring in and extracted from underground deposits, and mixtures or byproducts of these hydrocarbon constituents.

Fuel cell — an advanced energy conversion device that combines hydrogen-bearing fuels with air-borne oxygen in an electrochemical reaction to produce electricity very efficiently and with minimal environmental impact.

Geothermal — natural heat from within the earth, captured for production of electric power, space heating, or industrial steam.

Grid — the electrical transmission and distribution system linking power plants to customers through high power transmission line service.

Hydroelectric — a technology that produces electricity by using falling water to turn a turbine generator, referred to as hydro. See also “small hydro.”

Investor-owned utility (IOU) — synonymous with “electrical corporations” as defined herein.

Landfill gas (LFG) — gas produced by the breakdown of organic matter in a landfill (composed primarily of methane and carbon dioxide) or the technology that uses this gas to produce power.

Marketer — an agent for generation projects who markets power on behalf of the generator. The marketer may also arrange transmission, firming or other ancillary services as needed. Though a marketer may perform many of the same functions as a broker, a marketer represents the generator while a broker acts as a middleman.

Market price referent — refers to the cost of a non-renewable product used as a comparison to renewable products which are needed to satisfy a retail seller’s RPS obligation pursuant to PUC section 399.15 (c). Further, pursuant to section 399.14 (f), procurement and administrative costs associated with long-term contracts entered into by an electrical corporation for eligible renewable resources, at or below the market price determined by the CPUC pursuant to subdivision (c) of section 399.15, shall be deemed reasonable per se, and shall be recoverable in rates.

Megawatt (MW) — one thousand kilowatts. One megawatt is about the amount of power to meet the peak demand of a large hotel.

Megawatt hour (mWh) — a unit of measure describing the amount of electricity consumed over time. It means one megawatt of electricity supplied for one hour. Two typical California households consume about a combined total of 1 mWh in an average month, one household consumes about 0.5 mWh.

Metered — the independent measurement with a standard meter of the electricity generated by a project or facility.

Municipal solid waste (MSW) —solid waste as defined in Public Resources Code section 40191.

Ocean wave — refers to an experimental technology that uses ocean waves to produce electricity.

Ocean thermal — refers to experimental technology that uses the temperature differences between deep and surface ocean water to produce electricity.

On-site generation — any electricity that is generated and used to serve load on that same site.

Photovoltaic (PV) — a technology that uses a semiconductor to convert sunlight directly into electricity.

Procurement — for the purposes of PUC section 399.14 (g), refers to a utility acquiring the renewable output of electric generation facilities that the utility owns or for which it has contracted.

Project — A group of one or more pieces of generating equipment, and ancillary equipment necessary to attach to the transmission grid, that is unequivocally separable from any other generating equipment or components. Two or more sets of generating equipment that are contiguous, or that share common control or maintenance facilities and schedules and are located within a one mile radius shall constitute a single project.

Public Goods Charge (PGC) — a surcharge applied to the electric bills of IOU ratepayers used to support energy efficiency, public interest research, development and demonstration (RD&D), low income, and renewable energy programs and collected pursuant to Public Utilities Code section 399.

Renewable — a power source other than a conventional power source within the meaning of Section 2805 of the Public Utilities Code. Section 2805 states: “ ‘Conventional power source’ means power derived from nuclear energy or the operation of a hydropower facility greater than 30 megawatts or the combustion of fossil fuels, unless cogeneration technology, as defined in Section 25134 of the Public Resources Code, is employed in the production of such power.”

Renewables Portfolio Standard (RPS) — for the purposes of this document, the term refers to California’s Renewables Portfolio Standard pursuant to SB 1078. In PUC section 399.12 (c) the law states that, “‘renewables portfolio standard’ means the specified percentage of electricity generated by eligible renewable energy resources that a retail seller is required to procure....”. Under the RPS, an electrical corporation must increase its total procurement of eligible renewable energy resources by at least an additional 1 percent of retail sales per year so that 20 percent of its retail sales are procured from eligible energy resources no later than December 31, 2017.

Repower(ed) — generically refers to replacing a significant portion of the generating equipment at an existing facility.

SB 90 funding award — funding awarded under the New Renewable Resources Account under Notice of Auction 500-97-506, Notice of Auction 500-00-504, or Notice of Auction 6-01-3.

Small hydro — a facility employing one or more hydroelectric turbine generators, the sum capacity of which does not exceed 30 megawatts. Pursuant to PUC section 399.12, procurement from a small hydro facility as of January 1, 2003 is eligible only for purposes of establishing the baseline of an electrical corporation. A new small hydro facility is not eligible for the RPS if it will require a new or increased appropriation or diversion of water under Part 2 (commencing with Section 1200) of Division 2 of the Water Code. Pursuant to PUC section 383.5 (d) (2) (C) (iv) as amended by Public Resources Code section 25743(b)(3)(D), a new small hydro facility must not require a new or increased appropriation of water under Part 2 (commencing with Section 1200) of Division 2 of the Water Code to be eligible for supplemental energy payments.

Supplemental Energy Payments (SEP) — incentive payments from the Energy Commission to eligible renewable generators for the costs above the market referent of energy procured to meet the RPS, pursuant to PUC section 399.15 (a) (2). Any indirect costs from procuring eligible renewable resources – such as imbalance energy charges, sale of excess energy, decreased generation from existing resources, or transmission upgrades – are not eligible for SEP. The cost of the contract bids for renewable resources that are selected by the utilities to meet their RPS obligation will be compared to the cost of a comparable non-renewable product, the market price referent. Costs for renewable products that exceed the referent, excluding indirect costs noted above, will be covered by the SEP, subject to availability of Public Goods Charge (PGC) funds, pursuant to PUC section 399.15 (a) (4). The Energy Commission will distribute the SEP directly to the renewable generator through its New Renewable Facilities Program.

Tidal current power – energy obtained by using the motion of the tides to run water turbines that drive electric generators.

Transmission system — an interconnected group of electric transmission lines and associated equipment to move or transfer electric energy in bulk between points of supply and consumption.

Western Electricity Coordinating Council (WECC) — formed on April 18, 2002, by the merger of the Western Systems Coordinating Council (WSCC), Southwest Regional Transmission Association (SWRTA), and Western Regional Transmission Association (WRTA). WECC is responsible for coordinating and promoting electric system reliability, assuring open and non-discriminatory transmission access among members, and providing a forum for resolving transmission access disputes.

WECC interconnection — the substation where radial lines from a given power plant interconnect to the WECC-controlled transmission system.

Wind power— energy from wind converted into mechanical energy and then electricity.

Appendix C

ACRONYMS

AB	—	Assembly Bill
CCA	—	community choice aggregator
CEQA	—	California Environmental Quality Act
CPUC	—	California Public Utilities Commission
CTC	—	competitive transition charge
DIR	—	Department of Industrial Relations
ESP	—	electric service provider
IOU	—	investor owned utility
ISO	—	Independent System Operator
kWh	—	kilowatt-hour
LFG	—	landfill gas
MSW	—	municipal solid waste
MW	—	megawatt
mWh	—	megawatt-hour
NEPA	—	National Energy Policy Act
NRFP	—	New Renewable Facilities Program
PGC	—	Public Goods Charge
PG&E	—	Pacific Gas and Electric Company
PPA	—	power purchase agreement
PUC	—	Public Utilities Code
PV	—	photovoltaic
REP	—	Renewable Energy Program
RPS	—	Renewable Portfolio Standard
SB	—	Senate Bill
SCE	—	Southern California Edison Company
SDG&E	—	San Diego Gas and Electric Company
SEP	—	supplemental energy payment
TIN	—	taxpayer identification number
WECC	—	Western Electricity Coordinating Council

Appendix D

RELEVANT STATUTORY LANGUAGE

Statutory language is included only to assist parties in their review of the guidebook. Once the guidebook has been adopted, this appendix will be deleted.

Senate Bill 1078 (Chapter 516, Statutes of 2002, Sher)

Public Utilities Code

Article 16. California Renewables Portfolio Standard Program

399.11. The Legislature finds and declares all of the following:

(a) In order to attain a target of 20 percent renewable energy for the State of California and for the purposes of increasing the diversity, reliability, public health and environmental benefits of the energy mix, it is the intent of the Legislature that the California Public Utilities Commission and the State Energy Resources Conservation and Development Commission implement the California Renewables Portfolio Standard Program described in this article.

(b) Increasing California's reliance on renewable energy resources may promote stable electricity prices, protect public health, improve environmental quality, stimulate sustainable economic development, create new employment opportunities, and reduce reliance on imported fuels.

(c) The development of renewable energy resources may ameliorate air quality problems throughout the state and improve public health by reducing the burning of fossil fuels and the associated environmental impacts.

(d) The California Renewables Portfolio Standard Program is intended to complement the Renewable Energy Program administered by the State Energy Resources Conservation and Development Commission and established pursuant to Sections 383.5 and 445.

399.12. For purposes of this article, the following terms have the following meanings:

(a) "Eligible renewable energy resource" means an electric generating facility that is one of the following:

(1) The facility meets the definition of "in-state renewable electricity generation technology" in Section 383.5.

(2) A geothermal generation facility originally commencing operation prior to September 26, 1996, shall be eligible for purposes of adjusting a retail seller's baseline quantity of eligible renewable energy resources except for output certified as incremental geothermal production by the Energy Commission, provided that the incremental output was not sold to an electrical corporation under contract entered into prior to September 26, 1996. For each facility seeking certification, the Energy Commission shall determine historical production trends and establish criteria for measuring incremental geothermal production that recognizes the declining output of existing steamfields and the contribution of capital investments in the facility or wellfield.

(3) The output of a small hydroelectric generation facility of 30 megawatts or less procured or owned by an electrical corporation as of the date of enactment of this article shall be eligible only for purposes of establishing the baseline of an electrical corporation pursuant to paragraph (3) of subdivision (a) of Section 399.15. A new hydroelectric facility is not an eligible renewable energy resource if it will require a new or increased appropriation or diversion of water under Part 2 (commencing with Section 1200) of Division 2 of the Water Code.

(4) A facility engaged in the combustion of municipal solid waste shall not be considered an eligible renewable resource unless it is located in Stanislaus County and was operational prior to September 26, 1996. Output from such facilities shall be eligible only for the purpose of adjusting a retail seller's baseline quantity of eligible renewable energy resources.

(b) "Retail seller" means an entity engaged in the retail sale of electricity to end-use customers, including any of the following:

(1) An electrical corporation, as defined in Section 218.

(2) A community choice aggregator. The commission shall institute a rulemaking to determine the manner in which a community choice aggregator will participate in the renewables portfolio standard subject to the same terms and conditions applicable to an electrical corporation.

(3) An electric service provider, as defined in Section 218.3 subject to the following conditions:

(A) An electric service provider shall be considered a retail seller under this article for sales to any customer acquiring service after January 1, 2003.

(B) An electric service provider shall be considered a retail seller under this article for sales to all its customers beginning on the earlier of January 1, 2006, or the date on which a contract between an electric service provider and a retail customer expires. Nothing on this subdivision may require an electric service provider to disclose the terms of the contract to the commission.

(C) The commission shall institute a rulemaking to determine the manner in which electric service providers will participate in the renewables portfolio standard. The electric service provider shall be subject to the same terms and conditions applicable to an electrical corporation pursuant to this article. Nothing in this paragraph shall impair a contract entered into between an electric service provider and a retail customer prior to the suspension of direct access by the commission pursuant to Section 80110 of the Water Code.

(4) "Retail seller" does not include any of the following:

(A) A corporation or person employing cogeneration technology or producing power consistent with subdivision (b) of Section 218.

(B) The Department of Water Resources acting in its capacity pursuant to Division 27 (commencing with Section 80000) of the Water Code.

(C) A local publicly owned electrical utility as defined in subdivision (d) of Section 9604.

(c) "Renewables portfolio standard" means the specified percentage of electricity generated by eligible renewable energy resources that a retail seller is required to procure pursuant to Sections 399.13 and 399.15.

399.13. The Energy Commission shall do all of the following:

(a) Certify eligible renewable energy resources that it determines meet the criteria described in subdivision (a) of Section 399.12.

(b) Design and implement an accounting system to verify compliance with the renewables portfolio standard by retail sellers, to ensure that renewable energy output is counted only once for the purpose of meeting the renewables portfolio standard of this state or any other state, and for verifying retail product claims in this state or any other state. In establishing the guidelines governing this system, the Energy Commission shall collect data from electricity market participants that it deems necessary to verify compliance of retail sellers, in accordance with the requirements of this article and the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code). In seeking data from electrical corporations, the Energy Commission shall request data from the commission. The commission shall collect data from electrical corporations and remit the data to the Energy Commission within 90 days of the request.

(c) Allocate and award supplemental energy payments pursuant to Section 383.5 to eligible renewable energy resources to cover above-market costs of renewable energy.

Senate Bill 1038 (Chapter 515, Statutes of 2002, Sher)**Public Utilities Code**

383.5. (a) It is the intent of the Legislature in establishing this program, to increase the amount of renewable electricity generated per year, so that it equals at least 17 percent of the total electricity generated for consumption in California.

(b) As used in this section, the following terms have the following meaning:

(1) "In-state renewable electricity generation technology" means a facility that meets all of the following criteria:

(A) The facility uses biomass, solar thermal, photovoltaic, wind, geothermal, fuel cells using renewable fuels, small hydroelectric generation of 30 megawatts or less, digester gas, municipal solid waste conversion, landfill gas, ocean wave, ocean thermal, or tidal current, and any additions or enhancements to the facility using that technology.

(B) The facility is located in the state or near the border of the state with the first point of connection to the Western Electricity Coordinating Council (WECC) transmission system located within this state.

(C) For the purposes of this subdivision, "solid waste conversion" means a technology that uses a noncombustion thermal process to convert solid waste to a clean burning fuel for the purpose of generating electricity, and that meets all of the following criteria:

(i) The technology does not use air or oxygen in the conversion process, except ambient air to maintain temperature control.

(ii) The technology produces no discharges of air contaminants or emissions, including greenhouse gases as defined in Section 42801 of the Health and Safety Code.

(iii) The technology produces no discharges to surface or groundwaters of the state.

(iv) The technology produces no hazardous wastes.

(v) To the maximum extent feasible, the technology removes all recyclable materials and marketable green waste compostable materials from the solid waste stream prior to the conversion process and the owner or operator of the facility certifies that the those materials will be recycled or composted.

(vi) The facility at which the technology is used is in compliance with all applicable laws, regulations, and ordinances.

(vii) The technology meets any other conditions established by the State Energy Resources Conservation and Development Commission.

(viii) The facility certifies that any local agency sending solid waste to the facility is in compliance with Division 30 (commencing with Section 40000) of the Public Resources Code, has reduced, recycled, or composted solid waste to the maximum extent feasible, and shall have been found by the California Integrated Waste Management Board to have diverted at least 30 percent of all solid waste through source reduction, recycling and composting.

(d) (1) Fifty-one and one-half percent of the funds collected pursuant to paragraph (6) of subdivision (c) of Section 381, shall be used for programs designed to foster the development of new in-state renewable electricity generation technology facilities, and to secure for the state the environmental, economic, and reliability benefits that continued operation of those facilities will provide.

(2) Any funds used for new in-state renewable electricity generation technology facilities pursuant to this subdivision shall be expended in accordance with the report, subject to all of the following requirements:

(A) In order to cover the above market costs of renewable resources as approved by the commission and selected by retail sellers to fulfill their obligations under Article 16 (commencing

with Section 399.11), the Energy Commission shall award funds in the form of supplemental energy payments, subject to the following criteria:

(i) The Energy Commission may establish caps on supplemental energy payments. The caps shall be designed to provide for a viable energy market capable of achieving the goals of Article 16 (commencing with Section 399.11). The Energy Commission may waive application of the caps to accommodate a facility, if it is demonstrated to the satisfaction of the Energy Commission, that operation of the facility would provide substantial economic and environmental benefits to end use customers subject to the funding requirements of Section 381.

(ii) Supplemental energy payments shall be awarded only to facilities that are eligible for funding under this subdivision.

(iii) Supplemental energy payments awarded to facilities selected by an electrical corporation pursuant to Article 16 (commencing with Section 399.11) shall be paid for the lesser of 10 years, or the duration of the contract with the electrical corporation.

(iv) The Energy Commission shall reduce or terminate supplemental energy payments for projects that fail either to commence and maintain operations consistent with the contractual obligations to an electrical corporation, or that fail to meet eligibility requirements.

(v) Funds shall be managed in an equitable manner in order for retail sellers to meet their obligation under Article 16 (commencing with Section 399.11).

(B) The Energy Commission may determine as part of a solicitation, that a facility that does not meet the definition of "in-state renewable electricity generation technology" facility solely because it is located outside the state, is eligible for funding under this subdivision if it meets both of the following requirements:

(i) It is located so that it is or will be connected to the Western Electricity Coordinating Council (WECC) transmission system.

(ii) It is developed with guaranteed contracts to sell its generation to end use customers subject to the funding requirements of Section 381, or to marketers that provide this guarantee for resale of the generation, for a period of time at least equal to the amount of time it receives incentive payments under this subdivision.

(C) Facilities that are eligible to receive funding pursuant to this subdivision shall be registered in accordance with criteria developed by the Energy Commission and those facilities may not receive payments for any electricity produced that has any of the following characteristics:

(i) Is sold under an existing long-term contract with an existing in-state electrical corporation if the contract includes fixed energy or capacity payments, except for that electricity that satisfies the provisions of subparagraph (C) of paragraph (1) of subdivision (c) of Section 399.6.

(ii) Is used onsite or is sold to customers in a manner that excludes competitive transition charge payments, or is otherwise excluded from competitive transition charge payments.

(iii) Is produced by a facility that is owned by an electrical corporation or a local publicly owned electric utility as defined in subdivision (d) of Section 9604.

(iv) Is a hydroelectric generation project that will require a new or increased appropriation of water under Part 2 (commencing with Section 1200) of Division 2 of the Water Code.

(D) Eligibility to compete for funds or to receive funds shall be contingent upon having to sell the output of the renewable electricity generation facility to customers subject to the funding requirements of Section 381.

(E) The Energy Commission may require applicants competing for funding to post a forfeitable bid bond or other financial guaranty as an assurance of the applicant's intent to move forward expeditiously with the project proposed. The amount of any bid bond or financial guaranty may not exceed 10 percent of the total amount of the funding requested by the applicant.

(F) In awarding funding, the Energy Commission may provide preference to projects that provide tangible demonstrable benefits to communities with a plurality of minority or low-income populations.

(3) Repowered existing facilities shall be eligible for funding under this subdivision if the capital investment to repower the existing facility equals at least 80 percent of the value of the repowered facility.

(4) Facilities engaging in the combustion of municipal solid waste or tires are not eligible for funding under this subdivision.

(5) Production incentives awarded under this subdivision prior to January 1, 2002, shall commence on the date that a project begins electricity production, provided that the project was operational prior to January 1, 2002, unless the Energy Commission finds that the project will not be operational prior to January 1, 2002, due to circumstances beyond the control of the developer. Upon making a finding that the project will not be operational due to circumstances beyond the control of the developer, the Energy Commission shall pay production incentives over a five-year period, commencing on the date of operation, provided that the date that a project begins electricity production may not extend beyond January 1, 2007.

(6) Facilities generating electricity from biomass energy shall be considered an in-state renewable electricity generation technology facility to the extent that they certify to the satisfaction of the Energy Commission that fuel utilization is limited to the following:

(A) Agricultural crops and agricultural wastes and residues.

(B) Solid waste materials such as waste pallets, crates, dunnage, manufacturing, and construction wood wastes, landscape or right-of-way tree trimmings, mill residues that are directly the result of the milling of lumber, and rangeland maintenance residues.

(C) Wood and wood wastes that meet all of the following requirements:

(i) Have been harvested pursuant to an approved timber harvest plan prepared in accordance with the Z'berg-Nejedly Forest Practice Act of 1973 (Ch. 8 (commencing with Sec. 4511), Pt. 2, Div. 4, P.R.C.).

(ii) Have been harvested for the purpose of forest fire fuel reduction or forest stand improvement.

(iii) Do not transport or cause the transportation of species known to harbor insect or disease nests outside zones of infestation or current quarantine zones, as identified by the Department of Food and Agriculture or the Department of Forestry and Fire Protection, unless approved by the Department of Food and Agriculture and the Department of Forestry and Fire Protection.

Senate Bill 183 (Chapter 666, Statutes of 2003, Sher)

Public Resources Code

SECTION 1. Section 25401.6 of the Public Resources Code is amended to read:

25401.6. (a) In its administration of Section 25744, the commission shall establish a separate rebate for eligible distributed emerging technologies for affordable housing projects including, but not limited to, projects undertaken pursuant to Section 50052.5, 50053, or 50199.4 of the Health and Safety Code. In establishing the rebate, where the commission determines that the occupants of the housing shall have individual meters, the commission may adjust the amount of the rebate based on the capacity of the system, provided that a system may receive a rebate only up to 75 percent of the total installed costs. The commission may establish a reasonable limit on the total amount of funds dedicated for purposes of this section.

(b) It is the intent of the Legislature that this section fulfills the purpose of paragraph (5) of subdivision (b) of Section 25744.

SEC. 2. Chapter 8.6 (commencing with Section 25740) is added to Division 15 of the Public Resources Code, to read:

CHAPTER 8.6. RENEWABLE ENERGY RESOURCES PROGRAM

25740. It is the intent of the Legislature in establishing this program, to increase the amount of renewable electricity generated per year, so that it equals at least 17 percent of the total electricity generated for consumption in California per year by 2006.

25741. As used in this chapter, the following terms have the following meaning:

(a) "In-state renewable electricity generation facility" means a facility that meets all of the following criteria:

(1) The facility uses biomass, solar thermal, photovoltaic, wind, geothermal, fuel cells using renewable fuels, small hydroelectric generation of 30 megawatts or less, digester gas, municipal solid waste conversion, landfill gas, ocean wave, ocean thermal, or tidal current, and any additions or enhancements to the facility using that technology.

(2) The facility is located in the state or near the border of the state with the first point of connection to the Western Electricity Coordinating Council (WECC) transmission system located within this state.

(3) For the purposes of this subdivision, "solid waste conversion" means a technology that uses a noncombustion thermal process to convert solid waste to a clean-burning fuel for the purpose of generating electricity, and that meets all of the following criteria:

(A) The technology does not use air or oxygen in the conversion process, except ambient air to maintain temperature control.

(B) The technology produces no discharges of air contaminants or emissions, including greenhouse gases as defined in Section 42801.1 of the Health and Safety Code.

(C) The technology produces no discharges to surface or groundwaters of the state.

(D) The technology produces no hazardous wastes.

(E) To the maximum extent feasible, the technology removes all recyclable materials and marketable green waste compostable materials from the solid waste stream prior to the conversion process and the owner or operator of the facility certifies that those materials will be recycled or composted.

(F) The facility at which the technology is used is in compliance with all applicable laws, regulations, and ordinances.

(G) The technology meets any other conditions established by the commission.

(H) The facility certifies that any local agency sending solid waste to the facility diverted at least 30 percent of all solid waste it collects through solid waste reduction, recycling, and composting. For purposes of this paragraph "local agency" means any city, county, or special district, or subdivision thereof, which is authorized to provide solid waste handling services.

(b) "Renewable energy public goods charge" means that portion of the nonbypassable system benefits charge authorized to be collected and to be transferred to the Renewable Resource Trust Fund pursuant to the Reliable Electric Service Investments Act (Article 15 (commencing with Section 399) of Chapter 2.3 of Part 1 of Division 1 of the Public Utilities Code).

(c) "Report" means the report entitled "Investing in Renewable Electricity Generation in California" (June 2001, Publication Number P500-00-022) submitted to the Governor and the Legislature by the commission.

25742. (a) Twenty percent of the funds collected pursuant to the renewable energy public goods charge shall be used for programs that are designed to improve the competitiveness of existing in-state renewable electricity generation facilities, and to secure for the state the environmental, economic, and reliability benefits that continued operation of those facilities will provide. Eligibility for incentives under this section shall be limited to those technologies found eligible for funds by the commission pursuant to paragraphs (5), (6), and (8) of subdivision (c) of Section 399.6 of the Public Utilities Code.

(b) Any funds used to support in-state renewable electricity generation facilities pursuant to this section shall be expended in accordance with the provisions of the report, subject to all of the following requirements:

(1) Of the funding for existing renewable electricity generation facilities available pursuant to this section, 75 percent shall be used to fund first tier technologies, including biomass and solar electric technologies and 25 percent shall be used to fund second tier wind technologies.

(2) The commission shall reexamine the tier structure as proposed in the report and adjust the structure to reflect market and contractual conditions. The commission shall also consider inflation when adjusting the structure.

(3) The commission shall establish a cents per kilowatthour production incentive, not to exceed the payment caps per kilowatthour established in the report, as those payment caps are revised in guidelines adopted by the commission, representing the difference between target prices and the price paid for electricity, if sufficient funds are available. If there are insufficient funds in any payment period to pay either the difference between the target and price paid for electricity or the payment caps, production incentives shall be based on the amount determined by dividing available funds by eligible generation. The price paid for electricity shall be determined by the commission based on the energy prices paid to nonutility power generators as authorized by the Public Utilities Commission, or on otherwise available measures of price. For the first tier technologies, the commission shall establish a time-differentiated incentive structure that encourages plants to run the maximum feasible amount of time and that provides a higher incentive when the plants are receiving the lowest price.

(4) Facilities that are eligible to receive funding pursuant to this section shall be registered in accordance with criteria developed by the commission and those facilities may not receive payments for any electricity produced that has any of the following characteristics:

(A) Is sold at monthly average rates equal to or greater than the applicable target price, as determined by the commission.

(B) Is that portion of electricity generation attributable to the use of qualified agricultural biomass fuel, for a facility that is receiving fuel-based incentives through the Agricultural Biomass-to-Energy Incentive Grant Program established pursuant to Part 3 (commencing with

Section 1101) of Division 1 of the Food and Agricultural Code. Notwithstanding subdivision (f) of Section 1104 of the Food and Agricultural Code, facilities that receive funding from the Agricultural Biomass-to-Energy Incentive Grant Program are eligible to receive funding pursuant to this section.

(C) Is used onsite or is sold to customers in a manner that excludes competitive transition charge payments, or is otherwise excluded from competitive transition charge payments.

25743. (a) Fifty-one and one-half percent of the money collected pursuant to the renewable energy public goods charge, shall be used for programs designed to foster the development of new in-state renewable electricity generation facilities, and to secure for the state the environmental, economic, and reliability benefits that operation of those facilities will provide.

(b) Any funds used for new in-state renewable electricity generation facilities pursuant to this section shall be expended in accordance with the report, subject to all of the following requirements:

(1) In order to cover the above market costs of renewable resources as approved by the Public Utilities Commission and selected by retail sellers to fulfill their obligations under Article 16 (commencing with Section 399.11) of Chapter 2.3 of Part 1 of Division 1 of the Public Utilities Code, the commission shall award funds in the form of supplemental energy payments, subject to the following criteria:

(A) The commission may establish caps on supplemental energy payments. The caps shall be designed to provide for a viable energy market capable of achieving the goals of Article 16 (commencing with Section 399.11) of Chapter 2.3 of Part 1 of the Public Utilities Code. The commission may waive application of the caps to accommodate a facility, if it is demonstrated to the satisfaction of the commission, that operation of the facility would provide substantial economic and environmental benefits to end-use customers subject to the funding requirements of the renewable energy public goods charge.

(B) Supplemental energy payments shall be awarded only to facilities that are eligible for funding under this subdivision.

(C) Supplemental energy payments awarded to facilities selected by an electrical corporation pursuant to Article 16 (commencing with Section 399.11) of Chapter 2.3 of Part 1 of Division 1 of the Public Utilities Code shall be paid for the lesser of 10 years, or the duration of the contract with the electrical corporation.

(D) The commission shall reduce or terminate supplemental energy payments for projects that fail either to commence and maintain operations consistent with the contractual obligations to an electrical corporation, or that fail to meet eligibility requirements.

(E) Funds shall be managed in an equitable manner in order for retail sellers to meet their obligation under Article 16 (commencing with Section 399.11) of Chapter 2.3 of Part 1 of Division 1 of the Public Utilities Code.

(2) The commission may determine as part of a solicitation, that a facility that does not meet the definition of an "in-state renewable electricity generation technology" facility solely because it is located outside the state, is eligible for funding under this subdivision if it meets all of the following requirements:

(A) It is located so that it is or will be connected to the Western Electricity Coordinating Council (WECC) transmission system.

(B) It is developed with guaranteed contracts to sell its generation to end-use customers subject to the funding requirements of Section 381, or to marketers that provide this guarantee for resale of the generation, for a period of time at least equal to the amount of time it receives incentive payments under this subdivision.

(C) It will not cause or contribute to any violation of a California environmental quality standard or requirement.

(D) If the facility is outside of the United States, it is developed and operated in a manner that is as protective of the environment as a similar facility located in the state.

- (E) It meets any other condition established by the commission.
- (3) Facilities that are eligible to receive funding pursuant to this subdivision shall be registered in accordance with criteria developed by the commission and those facilities may not receive payments for any electricity produced that has any of the following characteristics:
 - (A) Is sold under an existing long-term contract with an existing in-state electrical corporation if the contract includes fixed energy or capacity payments, except for that electricity that satisfies subparagraph (C) of paragraph (1) of subdivision (c) of Section 399.6 of the Public Utilities Code.
 - (B) Is used onsite or is sold to customers in a manner that excludes competitive transition charge payments, or is otherwise excluded from competitive transition charge payments.
 - (C) Is produced by a facility that is owned by an electrical corporation or a local publicly owned electric utility as defined in subdivision (d) of Section 9604 of the Public Utilities Code.
 - (D) Is a hydroelectric generation project that will require a new or increased appropriation of water under Part 2 (commencing with Section 1200) of Division 2 of the Water Code.
 - (E) Is a solid waste conversion facility, unless the facility meets the criteria established in paragraph (3) of subdivision (a) of Section 25741 and the facility certifies that any local agency sending solid waste to the facility is in compliance with Division 30 (commencing with Section 40000), has reduced, recycled, or composted solid waste to the maximum extent feasible, and shall have been found by the California Integrated Waste Management Board to have diverted at least 30 percent of all solid waste through source reduction, recycling, and composting.
- (4) Eligibility to compete for funds or to receive funds shall be contingent upon having to sell the output of the renewable electricity generation facility to customers subject to the funding requirements of the renewable energy public goods charge.
- (5) The commission may require applicants competing for funding to post a forfeitable bid bond or other financial guaranty as an assurance of the applicant's intent to move forward expeditiously with the project proposed. The amount of any bid bond or financial guaranty may not exceed 10 percent of the total amount of the funding requested by the applicant.
- (6) In awarding funding, the commission may provide preference to projects that provide tangible demonstrable benefits to communities with a plurality of minority or low-income populations.
- (c) Repowered existing facilities shall be eligible for funding under this subdivision if the capital investment to repower the existing facility equals at least 80 percent of the value of the repowered facility.
- (d) Facilities engaging in the direct combustion of municipal solid waste or tires are not eligible for funding under this subdivision.
- (e) Production incentives awarded under this subdivision prior to January 1, 2002, shall commence on the date that a project begins electricity production, provided that the project was operational prior to January 1, 2002, unless the commission finds that the project will not be operational prior to January 1, 2002, due to circumstances beyond the control of the developer. Upon making a finding that the project will not be operational due to circumstances beyond the control of the developer, the commission shall pay production incentives over a five-year period, commencing on the date of operation, provided that the date that a project begins electricity production may not extend beyond January 1, 2007.
- (f) Facilities generating electricity from biomass energy shall be considered an in-state renewable electricity generation technology facility to the extent that they report to the commission the types and quantities of biomass fuels used and certify to the satisfaction of the commission that fuel utilization is limited to the following:
 - (1) Agricultural crops and agricultural wastes and residues.
 - (2) Solid waste materials such as waste pallets, crates, dunnage, manufacturing, and construction wood wastes, landscape or right-of-way tree trimmings, mill residues that are directly the result of the milling of lumber, and rangeland maintenance residues.

(3) Wood and wood wastes that meet all of the following requirements:

(A) Have been harvested pursuant to an approved timber harvest plan prepared in accordance with the Z'berg-Nejedly Forest Practice Act of 1973 (Chapter 8 (commencing with Sec. 4511) of Part 2 of Division 4).

(B) Have been harvested for the purpose of forest fire fuel reduction or forest stand improvement.

(C) Do not transport or cause the transportation of species known to harbor insect or disease nests outside zones of infestation or current quarantine zones, as identified by the Department of Food and Agriculture or the Department of Forestry and Fire Protection, unless approved by the Department of Food and Agriculture and the Department of Forestry and Fire Protection.

25744. (a) Seventeen and one-half percent of the money collected pursuant to the renewable energy public goods charge shall be used for a multiyear, consumer-based program to foster the development of emerging renewable technologies in distributed generation applications.

(b) Any funds used for emerging technologies pursuant to this section shall be expended in accordance with the report, subject to all of the following requirements:

(1) Funding for emerging technologies shall be provided through a competitive, market-based process that shall be in place for a period of not less than five years, and shall be structured so as to allow eligible emerging technology manufacturers and suppliers to anticipate and plan for increased sale and installation volumes over the life of the program.

(2) The program shall provide monetary rebates, buydowns, or equivalent incentives, subject to subparagraph (C), to purchasers, lessees, lessors, or sellers of eligible electricity generating systems. Incentives shall benefit the end-use consumer of renewable generation by directly and exclusively reducing the purchase or lease cost of the eligible system, or the cost of electricity produced by the eligible system. Incentives shall be issued on the basis of the rated electrical generating capacity of the system measured in watts, or the amount of electricity production of the system, measured in kilowatthours. Incentives shall be limited to a maximum percentage of the system price, as determined by the commission.

(3) Eligible distributed emerging technologies are photovoltaic, solar thermal electric, fuel cell technologies that utilize renewable fuels, and wind turbines of not more than 50 kilowatts rated electrical generating capacity per customer site, and other distributed renewable emerging technologies that meet the emerging technology eligibility criteria established by the commission. Eligible electricity generating systems are intended primarily to offset part or all of the consumer's own electricity demand, and shall not be owned by local publicly owned electric utilities, nor be located at a customer site that is not receiving distribution service from an electrical corporation that is subject to the renewable energy public goods charge and contributing funds to support programs under this chapter. All eligible electricity generating system components shall be new and unused, shall not have been previously placed in service in any other location or for any other application, and shall have a warranty of not less than five years to protect against defects and undue degradation of electrical generation output. Systems and their fuel resources shall be located on the same premises of the end-use consumer where the consumer's own electricity demand is located, and all eligible electricity generating systems shall be connected to the utility grid in California. The commission may require eligible electricity generating systems to have meters in place to monitor and measure a system's performance and generation. Only systems that will be operated in compliance with applicable law and the rules of the Public Utilities Commission shall be eligible for funding.

(4) The commission shall limit the amount of funds available for any system or project of multiple systems and reduce the level of funding for any system or project of multiple systems that has received, or may be eligible to receive, any government or utility funds, incentives, or credit.

(5) In awarding funding, the commission may provide preference to systems that provide tangible demonstrable benefits to communities with a plurality of minority or low-income populations.

(6) In awarding funding, the commission shall develop and implement eligibility criteria and a system that provides preference to systems based upon system performance, taking into account factors, including, but not limited to, shading, insulation levels, and installation orientation.

(7) At least once annually, the commission shall publish and make available to the public the balance of funds available for emerging renewable energy resources for rebates, buydowns, and other incentives for the purchase of these resources.

25745. (a) Ten percent of the money collected pursuant to the renewable energy public goods charge shall be used to provide customer credits to customers that entered into a direct transaction on or before September 20, 2001, for purchases of electricity produced by registered in-state renewable electricity generating facilities.

(b) Any funds used for customer credits pursuant to this section shall be expended, as provided in the report, subject to all of the following requirements:

(1) Customer credits shall be awarded to California retail customers located in the service territory of an electrical corporation that is subject to the renewable energy public goods charge that is contributing funds to support programs under this chapter, and that is purchasing qualifying electricity from renewable electricity generating facilities, through transactions traceable to specific generation sources by any auditable contract trail or equivalent that provides commercial verification that the electricity from the claimed renewable electricity generating facilities has been sold once and only once to a retail customer.

(2) Credits awarded pursuant to this paragraph may be paid directly to electric service providers, energy marketers, aggregators, or generators if those persons or entities account for the credits on the recipient customer's bills. Credits may not exceed one and one-half cents (\$0.015) per kilowatthour. Credits awarded to members of the combined class of customers, other than residential and small commercial customers, may not exceed one thousand dollars (\$1,000) per customer per calendar year. In no event may more than 20 percent of the total customer incentive funds be awarded to members of the combined class of customers other than residential and small commercial customers.

(3) The commission shall develop criteria and procedures for the identification of energy purchasers and providers that are eligible to receive funds pursuant to this paragraph through a process consistent with this paragraph. These criteria and procedures shall apply only to funding eligibility and may not extend to other renewable marketing claims.

(4) Customer credits may not be awarded for the purchase of electricity that is used to meet the obligations of a renewable portfolio standard.

(5) The Public Utilities Commission shall notify the commission in writing within 10 days of revoking or suspending the registration of any electric service provider pursuant to paragraph (4) of subdivision (b) of Section 394.25 of the Public Utilities Code.

25746. One percent of the money collected pursuant to the renewable energy public goods charge shall be used in accordance with the report to promote renewable energy and disseminate information on renewable energy technologies, including emerging renewable technologies, and to help develop a consumer market for renewable energy and for small-scale emerging renewable energy technologies.

25747. (a) The commission shall adopt guidelines governing the funding programs authorized under this chapter, at a publicly noticed meeting offering all interested parties an opportunity to comment. Substantive changes to the guidelines may not be adopted without at least 10 days' written notice to the public. The public notice of meetings required by this subdivision may not be less than 30 days. Notwithstanding any other provision of law, any guidelines adopted pursuant to this chapter shall be exempt from the requirements of Chapter

3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code. The Legislature declares that the changes made to this subdivision by the act amending this section during the 2002 portion of the 2001-02 Regular Session are declaratory of, and not a change in existing law.

(b) Funds to further the purposes of this chapter may be committed for multiple years.

(c) Awards made pursuant to this chapter are grants, subject to appeal to the commission upon a showing that factors other than those described in the guidelines adopted by the commission were applied in making the awards and payments. Any actions taken by an applicant to apply for, or become or remain eligible and registered to receive, payments or awards, including satisfying conditions specified by the commission, shall not constitute the rendering of goods, services, or a direct benefit to the commission.

25748. The commission shall report to the Legislature on or before May 31, 2000, and on or before May 31 of every second year thereafter, regarding the results of the mechanisms funded pursuant to this chapter. Reports prepared pursuant to this section shall include a description of the allocation of funds among existing, new and emerging technologies; the allocation of funds among programs, including consumer-side incentives; and the need for the reallocation of money among those technologies. The report shall identify the types and quantities of biomass fuels used by facilities receiving funds pursuant to Section 25743 and their impacts on improving air quality. The reports shall discuss the progress being made toward achieving the 17-percent target provided in Section 25740 by each funding category authorized pursuant to this chapter. The reports shall also address the allocation of funds from interest on the accounts described in this chapter, and money in the accounts described in subdivision (b) of Section 25751. Money may be reallocated without further legislative action among existing, new, and emerging technologies and consumer-side programs in a manner consistent with the report and with the latest report provided to the Legislature pursuant to this section, except that reallocations may not reduce the allocation established in Section 25743 nor increase the allocation established in Section 25742.

25749. The commission shall, by December 1, 2003, prepare and submit to the Legislature a comprehensive renewable electricity generation resource plan that describes the renewable resource potential available in California, and recommendations for a plan for development to achieve the target of increasing the amount of electricity generated from renewable sources per year, so that it equals 17 percent of the total electricity generated for consumption in California by 2006. The commission shall consult with the Public Utilities Commission, electrical corporations, and the Independent System Operator, in the development and preparation of the plan.

25750. The commission shall participate in proceedings at the Public Utilities Commission that relate to or affect efforts to stimulate the development of electricity generated from renewable sources, in order to obtain coordination of the state's efforts to achieve the target of increasing the amount of electricity generated from renewable sources per year, so that it equals 17 percent of the total electricity generated for consumption in California by 2006.

25751. (a) The Renewable Resource Trust Fund is hereby created in the State Treasury.

(b) The following accounts are hereby established within the Renewable Resource Trust Fund:

- (1) The Existing Renewable Resources Account.
- (2) New Renewable Resources Account.
- (3) Emerging Renewable Resources Account.
- (4) Customer-Credit Renewable Resource Purchases Account.
- (5) Renewable Resources Consumer Education Account.

(c) The money in the fund may be expended for the state's administration of this article only upon appropriation by the Legislature in the annual Budget Act.

(d) Notwithstanding Section 383, that portion of revenues collected by electrical corporations for the benefit of in-state operation and development of existing and new and emerging renewable resource technologies, pursuant to Section 399.8 of the Public Utilities Code, shall be transmitted to the commission at least quarterly for deposit in the Renewable Resource Trust Fund pursuant to Section 399.6 of the Public Utilities Code. After setting aside in the fund money that may be needed for expenditures authorized by the annual Budget Act in accordance with subdivision (c), the Treasurer shall immediately deposit money received pursuant to this section into the accounts created pursuant to subdivision (b) in proportions designated by the commission for the current calendar year. Notwithstanding Section 13340 of the Government Code, the money in the fund and the accounts within the fund are hereby continuously appropriated to the commission without regard to fiscal year for the purposes enumerated in this chapter.

(e) Upon notification by the commission, the Controller shall pay all awards of the money in the accounts created pursuant to subdivision (b) for purposes enumerated in this chapter. The eligibility of each award shall be determined solely by the commission based on the procedures it adopts under this chapter. Based on the eligibility of each award, the commission shall also establish the need for a multiyear commitment to any particular award and so advise the Department of Finance. Eligible awards submitted by the commission to the Controller shall be accompanied by information specifying the account from which payment should be made and the amount of each payment; a summary description of how payment of the award furthers the purposes enumerated in this chapter; and an accounting of future costs associated with any award or group of awards known to the commission to represent a portion of a multiyear funding commitment.

(f) The commission may transfer funds between accounts for cashflow purposes, provided that the balance due each account is restored and the transfer does not adversely affect any of the accounts. The commission shall examine the cashflow in the respective accounts on an annual basis, and shall annually prepare and submit to the Legislature a report that describes the status of account transfers and repayments.

(g) The commission shall, on a quarterly basis, report to the Legislature on the implementation of this article. Those quarterly reports shall be submitted to the Legislature not more than 30 days after the close of each quarter and shall include information describing the awards submitted to the Controller for payment pursuant to this article, the cumulative commitment of claims by account, the relative demand for funds by account, a forecast of future awards, and other matters the commission determines may be of importance to the Legislature.

(h) The Department of Finance, commencing March 1, 1999, shall conduct an independent audit of the Renewable Resource Trust Fund and its related accounts annually, and provide an audit report to the Legislature not later than March 1 of each year for which this article is operative. The Department of Finance's report shall include information regarding revenues, payment of awards, reserves held for future commitments, unencumbered cash balances, and other matters that the Director of Finance determines may be of importance to the Legislature.

SEC. 3. Section 383.5 of the Public Utilities Code is repealed.

SEC. 4. Section 383.6 of the Public Utilities Code is amended to read:

383.6. The commission shall, by December 1, 2003, prepare and submit to the Legislature, a comprehensive transmission plan for renewable electricity generation facilities, to provide for the rational, orderly, cost-effective expansion of transmission facilities that may be necessary to facilitate the development of renewable electricity generation facilities identified in the renewable electricity generation resource plan prepared pursuant to Section 25749 of the Public Resources Code. The commission shall consult with the State Energy Resources Conservation

and Development Commission, the Independent System Operator, and electrical corporations in the development of and preparation of the plan.

SEC. 5. Section 383.7 of the Public Utilities Code is repealed.

SEC. 6. Section 394.25 of the Public Utilities Code is amended to read:

394.25. (a) The commission may enforce the provisions of Sections 2102, 2103, 2104, 2105, 2107, 2108, and 2114 against electric service providers as if those electric service providers were public utilities as defined in these code sections. Notwithstanding the above, nothing in this section grants the commission jurisdiction to regulate electric service providers other than as specifically set forth in this part. Electric service providers shall continue to be subject to the provisions of Sections 2111 and 2112. Upon a finding by the commission's executive director that there is evidence to support a finding that the electric service provider has committed an act constituting grounds for suspension or revocation of registration as set forth in subdivision (b) of Section 394.25, the commission shall notify the electric service provider in writing and notice an expedited hearing on the suspension or revocation of the electric service provider's registration to be held within 30 days of the notification to the electric service provider of the executive director's finding of evidence to support suspension or revocation of registration. The commission shall, within 45 days after holding the hearing, issue a decision on the suspension or revocation of registration, which shall be based on findings of fact and conclusions of law based on the evidence presented at the hearing. The decision shall include the findings of fact and the conclusions of law relied upon.

(b) An electric service provider may have its registration suspended or revoked, immediately or prospectively, in whole or in part, for any of the following acts:

(1) Making material misrepresentations in the course of soliciting customers, entering into service agreements with those customers, or administering those service agreements.

(2) Dishonesty, fraud, or deceit with the intent to substantially benefit the electric service provider or its employees, agents, or representatives, or to disadvantage retail electric customers.

(3) Where the commission finds that there is evidence that the electric service provider is not financially or operationally capable of providing the offered electric service.

(4) The misrepresentation of a material fact by an applicant in obtaining a registration pursuant to Section 394.

(c) Pursuant to its authority to revoke or suspend registration, the commission may suspend a registration for a specified period or revoke the registration, or in lieu of suspension or revocation, impose a moratorium on adding or soliciting additional customers. Any suspension or revocation of a registration shall require the electric service provider to cease serving customers within the boundaries of investor-owned electric corporations, and the affected customers shall be served by the electrical corporation until the time when they may select service from another service provider. Customers shall not be liable for the payment of any early termination fees or other penalties to any electric service provider under the service agreement if the serving electric service provider's registration is suspended or revoked.

(d) The commission shall require any electric service provider whose registration is revoked pursuant to paragraph (4) of subdivision (b) to refund all of the customer credit funds that the electric service provider received from the State Energy Resources Conservation and Development Commission pursuant to subdivision (a) of Section 25744 of the Public Resources Code. The repayment of these funds shall be in addition to all other penalties and fines appropriately assessed the electric service provider for committing those acts under other provisions of law. All customer credit funds refunded under this subdivision shall be deposited in the Renewable Resource Trust Fund for redistribution by the State Energy Resources Conservation and Development Commission pursuant to Chapter 8.6 (commencing with Section

25740) of Division 15 of the Public Resources Code. This subdivision may not be construed to apply retroactively.

(e) If a customer of an electric service provider or a community choice aggregator is involuntarily returned to service provided by an electrical corporation, any reentry fee imposed on that customer that the commission deems is necessary to avoid imposing costs on other customers of the electric corporation shall be the obligation of the electric service provider or a community choice aggregator, except in the case of a customer returned due to default in payment or other contractual obligations or because the customer's contract has expired. As a condition of its registration, an electric service provider or a community choice aggregator shall post a bond or demonstrate insurance sufficient to cover those reentry fees. In the event that an electric service provider becomes insolvent and is unable to discharge its obligation to pay reentry fees, the fees shall be allocated to the returning customers.

SEC. 7. Section 399.6 of the Public Utilities Code, as added by Section 4 of Chapter 1050 of the Statutes of 2000, is repealed.

SEC. 8. Section 399.8 of the Public Utilities Code, as amended by Section 1 of Chapter 770 of the Statutes of 2001, is repealed.

SEC. 9. Section 399.8 of the Public Utilities Code, as amended by Section 2 of Chapter 770 of the Statutes of 2001, is amended to read:

399.8. (a) In order to ensure that the citizens of this state continue to receive safe, reliable, affordable, and environmentally sustainable electric service, it is the policy of this state and the intent of the Legislature that prudent investments in energy efficiency, renewable energy, and research, development and demonstration shall continue to be made.

(b) (1) Every customer of an electrical corporation, shall pay a nonbypassable system benefits charge authorized pursuant to this article. The system benefits charge shall fund energy efficiency, renewable energy, and research, development and demonstration.

(2) Local publicly owned electric utilities shall continue to collect and administer system benefits charges pursuant to Section 385.

(c) (1) The commission shall require each electrical corporation to identify a separate rate component to collect revenues to fund energy efficiency, renewable energy, and research, development and demonstration programs authorized pursuant to this section beginning January 1, 2002, through January 1, 2012. The rate component shall be a nonbypassable element of the local distribution service and collected on the basis of usage.

(2) This rate component may not exceed, for any tariff schedule, the level of the rate component that was used to recover funds authorized pursuant to Section 381 on January 1, 2000. If the amounts specified in paragraph (1) of subdivision (d) are not recovered fully in any year, the commission shall reset the rate component to restore the unrecovered balance, provided that the rate component may not exceed, for any tariff schedule, the level of the rate component that was used to recover funds authorized pursuant to Section 381 on January 1, 2000. Pending restoration, any annual shortfalls shall be allocated pro rata among the three funding categories in the proportions established in paragraph (1) of subdivision (d).

(d) The commission shall order San Diego Gas and Electric Company, Southern California Edison Company, and Pacific Gas and Electric Company to collect these funds commencing on January 1, 2002, as follows:

(1) Two hundred twenty-eight million dollars (\$228,000,000) per year in total for energy efficiency and conservation activities, one hundred thirty-five million dollars (\$135,000,000) in total per year for renewable energy, and sixty-two million five hundred thousand dollars (\$62,500,000) in total per year for research, development and demonstration. The funds for

energy efficiency and conservation activities shall continue to be allocated in proportions established for the year 2000 as set forth in paragraph (1) of subdivision (c) of Section 381.

(2) The amounts shall be adjusted annually at a rate equal to the lesser of the annual growth in electric commodity sales or inflation, as defined by the gross domestic product deflator. (e) The commission and the Energy Commission shall retain and continue their oversight responsibilities as set forth in Sections 381 and 383, and Chapter 7.1 (commencing with Section 25620) and Chapter 8.6 (commencing with Section 25740) of Division 15 of the Public Resources Code.

(f) (1) On or before January 1, 2004, the Governor shall appoint an independent review panel including, but not limited to, members with expertise on the energy service needs of large and small electricity consumers, system reliability issues, and energy-related public policy. On or before January 1, 2005, the panel shall prepare and submit to the Legislature and the Energy Commission a report evaluating the energy efficiency, renewable energy, and research, development and demonstration programs funded under this section. Reasonable costs associated with the review in each of the three program categories, including technical assistance, may be charged to the relevant program category under procedures to be developed by the commission for energy efficiency and by the Energy Commission for renewable energy and research development and demonstration.

(2) The report shall also assess all of the following:

(A) Whether ongoing programs are consistent with the statutory goals.

(B) Whether potential synergies among the program categories described in paragraph (1) that could provide enhanced public value have been identified and incorporated in the programs.

(C) If established targets for increased renewable generation are likely to be achieved.

(D) What changes should be made to result in a more efficient use of public resources.

(3) The report shall also compare the Energy Commission's programs with efforts undertaken by other states and assess, as an alternative, the relative costs and benefits of adopting a tradable minimum renewable energy requirement in California. The evaluation shall include recommendations intended to optimize renewable resource development at the least cost.

(4) For energy efficiency programs, the report shall include an evaluation of all of the following:

(A) The net benefits secured for residential customers, taking into account both public and private costs, including improvements in that customer group's ability to avoid or reduce consumption of relatively costly peak electricity.

(B) Whether the programs provide a balance of benefits to all sectors that contribute to the funding.

(C) The extent to which competition in energy markets including, but not limited to, load participation in ancillary services markets, and improvements in technology affect the continuing need for such programs.

(D) The status and growth of the private, competitive energy services industry that provides energy efficiency services and other energy products to customers.

(E) The commercial availability of any new technologies that reduce electricity demands during high-priced periods.

(F) Customers' willingness and ability to reduce consumption or adopt energy efficiency measures without program support.

(G) The extent to which the programs have delivered cost-effective energy efficiency not adequately provided by markets and as a result have reduced energy demand and consumption.

(H) The relative cost-effectiveness of program expenditures compared to other current or potential expenditures to enhance system reliability.

(5) The report shall include specific recommendations aimed at assisting the Legislature in determining whether to change or eliminate the collection of the system benefits charge on or after January 1, 2007.

(6) The panel may update and revise the report as needed.

(g) Promptly after receiving the panel's report, the commission shall convene a proceeding to address implementation of the panel's energy efficiency recommendations.

(h) An applicant for the Large Nonresidential Standard Performance Contract Program funded pursuant to paragraph (1) of subdivision (b) and an electrical corporation shall promptly attempt to resolve disputes that arise related to the program's guidelines and parameters prior to entering into a program agreement. The applicant shall provide the electrical corporation with written notice of any dispute. Within 10 business days after receipt of the notice, the parties shall meet to resolve the dispute. If the dispute is not resolved within 10 business days after the date of the meeting, the electrical corporation shall notify the applicant of his or her right to file a complaint with the commission, which complaint shall describe the grounds for the complaint, injury, and relief sought. The commission shall issue its findings in response to a filed complaint within 30 business days of the date of receipt of the complaint. Prior to issuance of its findings, the commission shall provide a copy of the complaint to the electrical corporation, which shall provide a response to the complaint to the commission within five business days of the date of receipt. During the dispute period, the amount of estimated financial incentives shall be held in reserve until the dispute is resolved.

SEC. 10. Section 445 of the Public Utilities Code is repealed.

Senate Bill 67 (Chapter 731, Statutes of 2003, Bowen)

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Section 399.14 of the Public Utilities Code is amended to read:

399.14. (a) The commission shall direct each electrical corporation to prepare renewable energy procurement plans as described in paragraph (3) to satisfy its obligations under the renewables portfolio standard. To the extent feasible, this procurement plan shall be proposed, reviewed, and adopted by the commission as part of, and pursuant to, a general procurement plan process. The commission shall require each electrical corporation to review and update its renewable energy procurement plan as it determines to be necessary.

(1) (A) The commission shall not require an electrical corporation to conduct procurement to fulfill the renewables portfolio standard until the commission determines either of the following:

(i) The electrical corporation has attained an investment grade credit rating as determined by at least two major rating agencies.

(ii) The electrical corporation is able to procure eligible renewable energy resources on reasonable terms, those resources can be financed if necessary, and the procurement will not impair the restoration of an electrical corporation's creditworthiness. This provision shall not apply before April 1, 2004, for any electrical corporation that on June 30, 2003, is in federal court under Chapter 11 of the federal bankruptcy law.

(B) Within 90 days of the commission's determination as provided in subparagraph (A), an electrical corporation shall conduct solicitations to implement a renewable energy procurement plan. The determination required by this paragraph shall apply only to the requirements established pursuant to this article. The requirements established for an electrical corporation pursuant to Section 454.5 shall be governed by that section.

(2) Not later than six months after the effective date of this section, the commission shall adopt, by rule, for all electrical corporations, all of the following:

(A) A process for determining market prices pursuant to subdivision (c) of Section 399.15. The commission shall make specific determinations of market prices after the closing date of a competitive solicitation conducted by an electrical corporation for eligible renewable energy resources. In order to ensure that the market price established by the commission pursuant to subdivision (c) of Section 399.15 does not influence the amount of a bid submitted through the competitive solicitation in a manner that would increase the amount ratepayers are obligated to pay for renewable energy, and in order to ensure that the bid price does not influence the establishment of the market price, the electrical corporation shall not transmit or share the results of any competitive solicitation for eligible renewable energy resources until the commission has established market prices pursuant to subdivision (c) of Section 399.15.

(B) A process that provides criteria for the rank ordering and selection of least-cost and best-fit renewable resources to comply with the annual California Renewables Portfolio Standard Program obligations on a total cost basis. This process shall consider estimates of indirect costs associated with needed transmission investments and ongoing utility expenses resulting from integrating and operating eligible renewable energy resources.

(C) Flexible rules for compliance including, but not limited to, permitting electrical corporations to apply excess procurement in one year to subsequent years or inadequate procurement in one year to no more than the following three years.

(D) Standard terms and conditions to be used by all electrical corporations in contracting for eligible renewable energy resources, including performance requirements for renewable generators.

(3) Consistent with the goal of procuring the least-cost and best-fit eligible renewable energy resources, the renewable energy procurement plan submitted by an electrical corporation shall include, but is not limited to, all of the following:

(A) An assessment of annual or multiyear portfolio supplies and demand to determine the optimal mix of renewable generation resources with deliverability characteristics that may include peaking, dispatchable, baseload, firm, and as-available capacity.

(B) Provisions for employing available compliance flexibility mechanisms established by the commission.

(C) A bid solicitation setting forth the need for renewable generation of each deliverability characteristic, required online dates, and locational preferences, if any.

(4) In soliciting and procuring eligible renewable energy resources, each electrical corporation shall offer contracts of no less than 10 years in duration, unless the commission approves of a contract of shorter duration.

(5) In soliciting and procuring eligible renewable energy resources, each electrical corporation may give preference to projects that provide tangible demonstrable benefits to communities with a plurality of minority or low-income populations.

(b) The commission shall review and accept, modify, or reject each electrical corporation's renewable procurement plan 90 days prior to the commencement of renewable procurement pursuant to this article by the electrical corporation.

(c) The commission shall review the results of a renewable energy resources solicitation submitted for approval by an electrical corporation and accept or reject proposed contracts with eligible renewable energy resources based on consistency with the approved renewable procurement plan. If the commission determines that the bid prices are elevated due to a lack of effective competition amongst the bidders, the commission shall direct the electrical corporation to renegotiate such contracts or conduct a new solicitation.

(d) If an electrical corporation fails to comply with a commission order adopting a renewable procurement plan, the commission shall exercise its authority pursuant to Section 2113 to require compliance.

(e) Upon application by an electrical corporation, the commission may authorize another entity to enter into contracts on behalf of customers of the electrical corporation for deliveries of eligible renewable energy resources to satisfy the annual portfolio standard obligations, subject to similar terms and conditions applicable to an electrical corporation. The commission shall allow the procurement entity to recover reasonable costs through retail rates subject to review and approval.

(f) Procurement and administrative costs associated with long-term contracts entered into by an electrical corporation for eligible renewable energy resources pursuant to this article, at or below the market price determined by the commission pursuant to subdivision (c) of Section 399.15, shall be deemed reasonable per se, and shall be recoverable in rates.

(g) For purposes of this article, "procure" means that a utility may acquire the renewable output of electric generation facilities that it owns or for which it has contracted. Nothing in this article is intended to imply that the purchase of electricity from third parties in a wholesale transaction is the preferred method of fulfilling a retail seller's obligation to comply with this article.

(h) Construction, alteration, demolition, installation, and repair work on an eligible renewable energy resource that receives production incentives or supplemental energy payments pursuant to Section 383.5, including, but not limited to, work performed to qualify, receive, or maintain production incentives or supplemental energy payments is "public works" for the purposes of Chapter 1 (commencing with Section 1720) of Part 7 of Division 2 of the Labor Code.

SEC. 2. Section 399.16 is added to the Public Utilities Code, to read:

399.16. The commission may consider an electric generating facility that is located outside the state to be an eligible renewable energy resource if it meets the criteria described in Section 399.12 and all of the following requirements:

(a) It is located so that it is, or will be, connected to the Western Electricity Coordinating Council (WECC) transmission system.

(b) It is developed with guaranteed contracts to sell its generation, and demonstrates delivery of energy, to a retail seller or the Independent System Operator.

(c) It participates in the accounting system to verify compliance with the renewables portfolio standard by retail sellers, once established by the State Energy Resources Conservation and Development Commission pursuant to subdivision (b) of Section 399.13.